

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ADOLFO DIAZ,

Defendant.

16-cr-719-5 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

The Court is in receipt of the attached letter from Defendant Adolfo Diaz, who is currently incarcerated, requesting that the Court appoint him a lawyer to assist in bringing unspecified claims on Defendant's behalf. For the reasons set forth below, Defendant's request is respectfully DENIED.

Although "[t]he [C]ourt may request an attorney to represent any person unable to afford counsel," 28 U.S.C. § 1915(e)(1), "the *right* to appointed counsel extends to the first appeal of right, and no further." *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (emphasis added). The Second Circuit has explained that courts "may appoint an unrepresented party counsel" based on "factors includ[ing]: (1) whether the party's claim has substantial merit; (2) whether the nature of the factual issues requires an investigation, and whether the party's ability to investigate is inhibited; (3) whether the claim's factual issues turn on credibility, which benefits from the skills of those trained in presentation of evidence and cross-examination; (4) the party's overall ability to present its case; and (5) whether the legal issues presented are complex." *Garcia v. USICE (Dep't of Homeland Sec.)*, 669 F.3d 91, 98–99 (2d Cir. 2011) (citing *Hodge v. Police Officers*, 802 F.2d 58, 60–61 (2d Cir. 1986)) (the "*Hodge* factors").

Here, Defendant does not specify the nature of the claim he seeks to bring, informing the Court only that he "ha[s] some good issue[s]." (Attach. #1.) The Court therefore cannot conduct

the five-factor analysis described above. *See Ganley v. City of New York*, 734 F. App'x 784, 785–86 (2d Cir. 2018) (referring to the “threshold requirement” that “the indigent litigant’s position is likely to be of substance”) (quoting *Hodge*, 802 F.2d at 61). In cases where prisoners “indicate, without more, that they wish to seek post-conviction relief,” there is no “general obligation of the courts . . . to appoint counsel.” *Johnson v. Avery*, 393 U.S. 483, 488 (1969). Accordingly, IT IS HEREBY ORDERED that Defendant’s request for appointed counsel is DENIED without prejudice to his making a future request, in which case he should provide an affidavit describing the claims he wishes to bring and establishing facts supporting the *Hodge* factors set forth above. SO ORDERED.

Dated: October 7, 2021
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

From: Adolfo Diaz # 78156-054

Federal correctional complex-Allenwood U.S.P

P.O. Box 3000

White Deer, PA 17887

To: Richard J. Sullivan

Southern District of New York

Thurgood Marshall U.S. Courthouse

40 Foley Square

New York, New York 10007

Your honor I'm submitting you this letter to request for a lawyer or so you could Reappoint me Mr. Santiago. Cause I have some good issued but I don't have the ability to do it myself. Please I would really appreciate it so much. In advance thank you so much.

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U.S. COURT OF APPEALS

INMATE NAME/NUMBER: Adolfo Diaz #78156-054
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The Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
Thurgood Marshall U.S. Courthouse
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